KOPERASI SERBAUSAHA MAKMUR BHD (KOSMA)
v. JAMIL NINGGAL & ORS

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
NALLINI PATHMANATHAN JCA
ZABARIAH MOHD YUSOF JCA
[CIVIL APPEAL NO: W-01(A)-154-04-2016]
18 APRIL 2018

UNINCORPORATED ASSOCIATIONS: *Society – Cooperation – Jurisdiction – Employers terminated employment of employees – Employees member of cooperation – Employees referred matter of dismissal without just cause or excuse to Tribunal of Cooperation Commission of Malaysia – Whether Tribunal seized with jurisdiction to determine disputes relating to wrongful termination of employment or unfair dismissal matter – Co-operative Societies Act 1993, ss. 82 & 83*

The first and second respondents were senior supervisor and manager, respectively, at the palm oil plantation owned by the appellant, Koperasi Serbausaha Makmur Berhad ('KOSMA'). When an audit report revealed that there was misconduct in the management of the plantation, KOSMA suspended the first and second respondents and issued show cause letters to them. As the first and second respondents' replies were deemed unsatisfactory, KOSMA proceeded to terminate their employment. However, the first and second respondents remained as members of KOSMA. The first and second respondents first lodged their complaints with the Minister of Human Resources and, after conciliation failed, the complaints were referred to the Industrial Court. The first and second respondents claimed against KOSMA for dismissal without just cause or excuse. During trial, the first and second respondents requested for an adjournment, as they wished to refer their claims to the Tribunal of the Cooperation Commission of Malaysia ('third respondent') on the ground that the Industrial Court was not seized with jurisdiction to hear the matter. After the third respondent's Tribunal accepted their case for adjudication, the first and second respondents withdrew their case at the Industrial Court. This meant that the dispute would have to be adjudicated afresh by the third respondent's Tribunal. KOSMA commenced judicial review proceedings, at the High Court, to quash the decision of the third respondent, in accepting the adjudication of the first and second respondents' claims. The High Court dismissed KOSMA's application. Hence, the present appeal. The primary issue that arose for adjudication was whether the third respondent was conferred with the requisite jurisdiction, under the Co-operative Societies Act 1993 ('the Act'), to deal with disputes relating to wrongful termination of employment or unfair dismissal.

Held (allowing appeal with costs)
Per Nallini Pathmanathan JCA delivering the judgment of the court:

(1) From a reading of s. 82 of the Act, it is clear that its purpose is the resolution of disputes. The type of dispute that the third respondent may resolve is described in s. 82(1) of the Act. It serves to define the limits of a dispute falling within the purview of the powers of the third respondent. The section envisages that the dispute must 'touch' on, or relate to, the constitution or by-laws of the society, the election of officers, conduct of general meetings by the society, management of the society, or the business of the co-operative society. If it falls within those specific areas, then it is further honed down to encompass only disputes touching on the above matters between several categories of persons. (paras 30-32)

(2) Construed as a whole, the Act relates to disputes concerning the internal or domestic affairs of the society and persons who are connected to the co-operative society. The Act does not purport to cover disputes which are outside of the scope of the workings and business of the society or persons who are not members, past members or heirs or legal representatives of deceased members. In other words, disputes which relate to members or officers/employees of the co-operative society only fall within the purview of this section relating to the resolution of disputes. (para 33)

(3) The dispute in the present case, of unjust or wrongful termination of the officers of the co-operative society, did not fall within the purview of s. 82(1) of the Act because (i) although the first and second respondents remained members of the co-operative society, their dispute was not in relation to their membership. Their grievance was not in their capacity as members as their grievances related to their past employment as officers; (ii) they were no longer officers of the co-operative society. The section makes no provision, on the face of it, for an ex-officer to have a dispute relating to unfair or wrongful dismissal adjudicated upon by a tribunal established at the behest of the Commission under s. 83 of the Act; (iii) their complaint related to a cessation of their relationship/employment as officers with the co-operative society as their employer. This did not fall within the section as there was no reference to past officers or ex-officers; and (iv) this case was distinguishable from the case of *M Arulandan v. Malaysian Co-operative Insurance Society Ltd* ('*Arulandan*') where Arulandan continued to remain in the employment of the co-operative society. The dispute could therefore be properly categorised as falling within the two defining limbs. This was because it related to the management of the co-operative society, as the discipline of officers falls within 'management'. Secondly, as a subsisting officer who had grievances, Arulandan could properly bring such grievances under s. 82 of the Act. (para 35)

***Bahasa Malaysia** Headnotes*

Responden pertama dan kedua, masing-masing, adalah penyelia kanan dan pengurus di ladang kelapa sawit milik perayu, iaitu Koperasi Serbausaha Makmur Berhad ('KOSMA'). Apabila laporan audit mendedahkan terdapat salah laku dalam pengurusan ladang tersebut, KOSMA menggantung kerja responden pertama dan kedua dan mengeluarkan surat tunjuk sebab kepada mereka. Oleh sebab jawapan responden pertama dan kedua dianggap tidak memuaskan, KOSMA terus menamatkan perkhidmatan mereka. Walau bagaimanapun, responden pertama dan kedua masih kekal ahli KOSMA. Responden pertama dan kedua, pada mulanya, memfailkan aduan mereka kepada Menteri Sumber Manusia dan selepas perdamaian gagal, aduan-aduan tersebut dirujuk pada Mahkamah Perusahaan. Responden pertama dan kedua menuntut terhadap KOSMA untuk pemecatan tanpa sebab atau alasan adil. Semasa perbicaraan, responden pertama dan kedua memohon penangguhan, kerana mereka berhasrat merujuk tuntutan-tuntutan mereka pada Tribunal bawah Suruhanjaya Koperasi Malaysia ('responden ketiga') atas alasan Mahkamah Perusahaan tidak berbidang kuasa mendengar perkara tersebut. Selepas Tribunal responden ketiga menerima kes mereka untuk diadjudikasi, responden pertama dan kedua menarik balik kes mereka di Mahkamah Tinggi. Ini bermaksud pertikaian tersebut perlu diadjudikasi semula oleh Tribunal responden ketiga. KOSMA memulakan prosiding semakan kehakiman, di Mahkamah Tinggi, untuk membatalkan keputusan responden ketiga, dalam menerima adjudikasi tuntutan responden pertama dan kedua. Mahkamah Tinggi menolak permohonan KOSMA. Maka timbul rayuan ini. Isu utama yang timbul untuk diputuskan adalah sama ada responden ketiga mempunyai bidang kuasa yang dikehendaki, bawah Akta Koperasi 1993 ('Akta'), untuk menangani pertikaian tentang pemecatan salah atau pembuangan kerja tidak adil.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Nallini Pathmanathan HMR menyampaikan penghakiman mahkamah:

(1) Berdasarkan bacaan s. 82 Akta, jelas bahawa fungsinya ialah menyelesaikan pertikaian. Jenis pertikaian yang responden ketiga boleh selesaikan dinyatakan dalam s. 82(1) Akta. Ini menggariskan batas-batas pertikaian yang terangkum dalam rangkuman kuasa responden ketiga. Seksyen ini membayangkan bahawa pertikaian mesti 'menyentuh' tentang, atau berkaitan dengan, pembentukan atau undang-undang kecil persatuan, pelantikan pegawai-pegawai, penjalanan mesyuarat-mesyuarat am oleh persatuan, pengurusan persatuan atau perniagaan persatuan koperasi. Jika terangkum dalam lingkungan khusus, ini selanjutnya dibentuk agar meliputi pertikaian-pertikaian bersentuhan hal-hal di atas antara beberapa kategori orang.

(2) Ditafsir secara menyeluruh, Akta adalah berkaitan pertikaian-pertikaian tentang hal ehwal dalam dan luar persatuan dan orang-orang berkaitan persatuan koperasi. Akta tidak bertujuan merangkumi pertikaian-pertikaian luar rangkuman kerja-kerja dan perniagaan persatuan atau orang-orang yang bukan ahli, ahli lampau atau waris atau wakil guaman ahli-ahli yang sudah meninggal dunia. Dalam kata lain, pertikaian-pertikaian berkaitan ahli-ahli atau pegawai-pegawai/pekerja-pekerja persatuan koperasi hanya terjumlah dalam rangkuman seksyen berkaitan penyelesaian pertikaian.

(3) Pertikaian dalam kes ini, iaitu pemecatan salah atau tidak adil pegawai persatuan koperasi, tidak terangkum bawah s. 82(1) Akta kerana (i) walaupun responden pertama dan kedua kekal sebagai ahli persatuan koperasi, pertikaian mereka tiada kaitan dengan keahlian mereka. Kilanan mereka bukan dalam kapasiti mereka sebagai ahli tetapi berkait perkhidmatan lampau mereka sebagai pegawai; (ii) mereka bukan lagi pegawai persatuan koperasi. Seksyen ini tidak membuat apa-apa peruntukan, pada dasarnya, untuk adjudikasi, seorang bekas pegawai yang mempunyai pertikaian tentang pemecatan salah atau tidak adil, oleh Tribunal yang ditubuhkan atas perintah Suruhanjaya bawah s. 83 Akta; (iii) aduan mereka berkaitan tamatnya hubungan/perkhidmatan mereka sebagai pegawai dengan persatuan koperasi sebagai majikan. Ini tidak terangkum bawah seksyen tersebut kerana tiada rujukan pada pegawai lampau atau bekas pegawai; dan (iv) kes ini boleh dibezakan dengan kes *M Arulandan v. Malaysian Co-operative Insurance Society Ltd* ('*Arulandan*') di mana Arulandan berterusan kekal berkhidmat dalam persatuan koperasi. Pertikaiannya boleh, dengan itu, dikategorikan dengan betul kerana terangkum bawah dua rangkai yang nyata. Ini kerana pertikaiannya berkaitan pengurusan persatuan koperasi, kerana disiplin pegawai-pegawai terangkum bawah 'pengurusan'. Kedua, sebagai pegawai saraan yang mempunyai kilanan, Arulandan boleh mengemukakan kilanan tersebut bawah s. 82 Akta.

Case(s) referred to:

Co-operative Central Bank Ltd & Ors v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabd [1970] AIR 245 ***(refd)***

Deccan Merchants Co-Operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors AIR [1969] Supreme Court 1320 ***(refd)***

M Arulandan v. Malaysian Co-operative Insurance Society Ltd [1987] 1 CLJ 43; [1987] CLJ (Rep) 44 SC ***(dist)***

Madhava Rao v. Surya Rao AIR [1954] Mad 103 ***(refd)***

On Long & Ors v. Romeli Dollah [2014] 7 CLJ 371 CA ***(refd)***

Legislation referred to:
Co-operative Societies Act 1993, ss. 82(1)(c), (5), 83(1)
Co-operative Societies Act 1948 (since repealed), s. 49(1)

For the appellant - Harjinder Singh & Premjit Singh; M/s Sabarudin Othman & Ho
For the 1st & 2nd respondents - Nazri Ibrahim; M/s Haranay Hisham Anikah & Assocs
For the 3rd respondent - Baizura Kamal; Suruhanjaya Koperasi Malaysia

[Editor's note: Appeal from High Court, Kuala Lumpur; Judicial Review No: 25-134-07-2014 (overruled).]

Reported by Najib Tamby

JUDGMENT

Nallini Pathmanathan JCA:

Introduction

[1] This appeal arises from the decision of the High Court dated 16 June 2016 dismissing the appellant's application for judicial review. In their application, the appellant, a co-operative society named Koperasi Serbausaha Makmur Berhad ('KOSMA'), had sought orders of *certiorari* as well as declaratory relief pertaining to the decision of the Suruhanjaya Koperasi, the third respondent ('the Commission') to refer the complaints of the respondents ('the respondents') of wrongful dismissal and defamation, to a tribunal ('tribunal') to be adjudicated upon. The *certiorari* order and declaratory relief sought is much in the same vein, namely that the respondents' complaints to the tribunal relating to wrongful dismissal, be set aside or declared illegal and void.

[2] The singular points of significance in this appeal relate to the following issues:

(i) When the employment of an employee of a co-operative society is terminated, resulting in a dispute, is the Commission conferred with the jurisdiction by the Co-operative Societies Act 1993 ('the Act'), to determine such a dispute relating to a complaint of wrongful termination of employment?

(ii) This turns on the construction to be accorded to s. 82(1) of the Act, more particularly the phrase "a dispute touching on the management or business" of the co-operative society, KOSMA. The precise issue requiring determination is whether the phrase "a dispute touching on the management or business" includes the settlement or adjudication of disputes relating to the wrongful termination of employment of co-operative society employees, as in the case with the respondents here.

(iii) The High Court, relying on the Supreme Court decision of *M Arulandan v. Malaysian Co-operative Insurance Society Ltd* [1987] 1 CLJ 43; [1987] CLJ (Rep) 44; [1987] 1 MLJ 485 ('*Arulandan*'), held that the 'dispute', namely the complaints of wrongful termination by the respondents, fell within the ambit of the phrase "a dispute touching on the management or business". The effect of the High Court's decision was to find that the third respondent is clothed with jurisdiction to determine or adjudicate upon claims of wrongful termination of employment by officers and/or employees of KOSMA. Accordingly KOSMA's judicial review application, which was premised on the contention that the Commission had no such jurisdiction or power, failed. The dispute was to be determined by a tribunal set up pursuant to a recommendation by the Commission to the Minister under s. 83 of the Act;

(iv) We determined and held otherwise, namely that the complaints of wrongful termination or unfair dismissal of employment of the respondents do not fall within the purview of the phrase "dispute touching on the management or business" of the co-operative society. The net result of our decision was to hold that the Commission did not possess jurisdiction over disputes of this nature. It was not therefore empowered to either deal with the dispute itself, or to refer the dispute to the tribunal established under s. 83(1) of the Act to resolve or adjudicate upon the dispute.

(v) We reached this decision for a few reasons. First, we concluded that the facts of the present case are distinguishable from *Arulandan* because in that case, the employee lodged a grievance in respect of disciplinary action taken against him by the co-operative society. However, his employment was never terminated and he remained at all times an officer of the co-operative society/company. He only sought relief against disciplinary action. To that extent, the case was distinguishable.

(vi) We were further persuaded by the fact that *Arulandan* was decided (particularly in relation to the interpretation to be accorded to the phrase "dispute touching on the management or business") by reliance on the Madras High Court decision of *Madhava Rao v. Surya Rao* AIR [1954] Mad 103 ("*Madhava Rao*'). In that case, the Indian equivalent provision of our s. 82(1)(c), (in *pari materia* with our provision) was accorded a wide or broad construction. Adopting the same approach, the Supreme Court led by Wan Suleiman SCJ, determined by a majority, that the phrase was to be broadly construed. George Seah SCJ dissented.

(vii) It was held that the dispute relating to whether the disciplinary procedures implemented by the Chief Executive amounted to a contravention of the relevant co-operative regulations, was a domestic dispute. It related to the internal administration of the co-operative society. The phrase "dispute touching the business of a registered society" was therefore wide enough to accommodate such a dispute, and it should be referred to the then Registrar General of Co-operative Societies under the then s. 49(1) of the Co-operative Societies Act 1948.

(viii) It is clear that in *Arulandan*, the dispute related to domestic or internal disciplinary proceedings. Arulandan's grievance was against the imposition of the proceedings and the punishment meted out. But Arulandan did not leave the employ of the co-operative society. He remained an officer, even after the disciplinary proceedings. To that extent, it is clear that his grievance with regards to his employment remained an internal matter of the co-operative society. The adoption of a 'broad' approach in the construction of the words "touching .... the management or business" of a co-operative society to encompass a domestic disciplinary proceeding is, with great respect, entirely correct.

(ix) Another relevant point worth mention is that the Indian High Court case of *Madhava Rao* which prescribed that a broad construction be accorded to the phrase "touching the business of a registered society" had in fact been overruled by the Indian Courts in the case of *Co-operative Central Bank Ltd & Ors v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabd* [1970] AIR 245 ('*Co-operative Central Bank*'). In *Co-operative Central Bank*, the learned judges relied in turn upon an Indian Supreme Court decision namely *Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugraj Jain and Ors* [1969] AIR ('*Deccan Merchants*') where the Supreme Court of India determined that a narrow construction or definition was to be accorded to the phrase "touching on the business".

(x) The word 'dispute' it was reasoned, was subject to a limitation, namely, to disputes capable of being resolved by the Registrar. As the dispute in question in *Deccan Merchants* was between a landlord and tenant, it was doubtful that the word 'dispute' in the equivalent Indian legislation relating to co-operatives, encompassed such a matter. There was specific legislation to deal with a landlord and tenant dispute.

(xi) In like manner, we were of the view that in Malaysia, the Industrial Relations Act 1967 provides specific legislation dealing with disputes pertaining to unfair dismissal. To that extent, we were of the view, with the greatest of respect, that the phrase "touching on the business" and "dispute" in s. 82(1)(c) ought to be accorded a narrow

construction or definition, as it did not appear to be within the contemplation of the Legislature to confer jurisdiction on the third respondent to adjudicate upon, and grant reliefs such as reinstatement or arrears of wages, in respect of grievances of unfair dismissal. This more properly fell within the regime of the Industrial Relations Act 1967.

(xii) We therefore allowed KOSMA's appeal, set aside the decision of the High Court and allowed the application for judicial review. The net consequence of our decision is that the Commission's decision to refer the respondents' dispute to such a tribunal is quashed. The Commission acted *ultra vires* or in excess of its jurisdiction in making such a reference because it was not, on our construction of s. 82(1)(c), conferred by Parliament with the jurisdiction to refer a dispute relating to wrongful dismissal of officers of a co-operative society to a tribunal for adjudication. Such a dispute is not a domestic or internal matter of the co-operative.

(xiii) When we delivered our decision, we afforded the parties the thrust of our reasons for the decision we made. We now set out our full grounds.

Essential Background Facts

[3] The factual matrix leading up to this case relates to the termination of the employment of one Jamil bin Ninggal and one Mohd Shaidi bin Mohd Salleh ('the respondents') who were, at the material time in 2009, employees of Ladang Gajah Jinak, a palm oil plantation ("the plantation"). The appellant, Koperasi Serbausaha Makmur Berhad ('KOSMA') is the owner of the plantation.

[4] The respondents claim that the termination of their employment was wrongful. Apart from wrongful termination, the respondents also made claims founded on defamation against KOSMA.

[5] KOSMA, the appellant, is a co-operative society established under the Act.

[6] The respondents were employees of KOSMA until their termination in June 2009. They remain members of KOSMA.

[7] The third respondent is a governing body tasked under the Act to oversee and exercise powers of supervision over all co-operative societies under the Act and the Malaysia Co-operative Societies Commission Act 2007.

[8] KOSMA employed the respondents as senior supervisor and farm manager respectively, at the plantation.

[9] On 12 January 2009 KOSMA received a report from the managing agent for the plantation, one BUDI-JS Plantation Management Sdn Bhd ("the managing agent"), that there were irregularities in payments to contractors, breaches of procedure and mismanagement of the plantation. A visiting agent confirmed that there were irregularities and mismanagement.

[10] KOSMA then conducted an internal audit. A management audit team was tasked to investigate the contents of the report by the managing agent and to review the operations of the plantation. The management audit report concluded that there was indeed misconduct in the management of the plantation.

[11] KOSMA then suspended the respondents. Show-cause letters were issued to the respondents, to which they provided explanations. KOSMA deemed their replies unsatisfactory and terminated their employment on 1 June 2009.

[12] The respondents each lodged a complaint with the Minister of Human Resources. After conciliation failed, the complaints were referred to the Industrial Court in Kuala Lumpur. The two claims of dismissal without just cause or excuse were duly consolidated and the matter proceeded to trial on 27 August 2013.

[13] However, on 9 April 2014, when KOSMA's sixth witness was due to continue testifying before the Industrial Court, the respondents requested an adjournment because they wished to refer their claims to the co-operative tribunal. They contended that the Industrial Court had no jurisdiction to hear the matter. The Industrial Court adjourned the hearing.

[14] Subsequently, the respondents informed the Industrial Court that the co-operative tribunal had accepted their case for adjudication. This meant that:

(a) The respondents had referred their 'dispute' with KOSMA to the Malaysia Co-operative Societies Commission ('the third respondent'); and

(b) The third respondent had determined that the 'dispute' fell within the purview of s. 82(1) of the Act, in so much as it 'touched on the management or business of a co-operative society'. Such a 'dispute' therefore warranted resolution by way of reference to a co-operative tribunal. It had accordingly referred the 'dispute' for such adjudication before a co-operative tribunal.

[15] The respondents then sought to withdraw their grievances being adjudicated in the Industrial Court. Despite objections from KOSMA, the complaints brought by the respondents in the Industrial Court were withdrawn. This in turn meant that the 'dispute' would have to be adjudicated upon afresh by a co-operative tribunal to be set up by the third respondent.

[16] KOSMA therefore commenced judicial review proceedings to quash the decision of the third respondent, in accepting for adjudication, the claim of wrongful termination made by the respondents.

[17] The High Court heard KOSMA's application for judicial review against the decision of the third respondent. It dismissed the application on 30 March 2016. Hence the present appeal.

[18] We first heard parties on 1 March 2017 and subsequently on 3 March 2017. We directed parties to file additional submissions by the end of March on the issue of the jurisdiction and/or provisions of the Co-operative Societies Act 1993 which enabled the third respondent to make such an order for a reference of the respondents' 'dispute' for wrongful termination of employment to a co-operative tribunal for adjudication and relief. Parties filed their additional submissions in the second week of April. We delivered our decision on 3 May 2017 together with brief reasons for the same.

[19] We determined that the claims and grievances of the respondents of wrongful termination from employment, did not fall within the scope of the phrase "touching on the business" or the word "dispute" in s. 82(1)(c) of the Act. Consequently, we concluded that the third respondent had acted *ultra vires* or in excess of its jurisdiction in referring the respondents' 'dispute' of wrongful termination of employment to be dealt with by the co-operative tribunal.

The Appellant's Grounds For Appeal

[20] KOSMA raised several grounds in support of its appeal. In brief, the appeal is premised on the following:

(a) the failure of the respondents to obtain the consent of the Minister of Human Resources before referring their complaint to the co-operative tribunal in contravention of s. 83 of the Act;

(b) The third respondent had acted *ultra vires* in the exercise of its powers under the Act in referring the matter to the co-operative tribunal, because an action for dismissal without just cause or excuse does not fall under the purview of the co-operative tribunal under s. 82(1) of the Act; and

(c) The respondents were abusing the process of the court because they had submitted themselves to the jurisdiction of the Industrial Court, but at the stage when the testimony of the appellant's witnesses had nearly been concluded, they withdrew their case in order to start over afresh in another forum, ie, the co-operative tribunal.

[21] KOSMA asserted that the Industrial Court is the proper forum to adjudicate on this dispute as it falls within the jurisdiction of the Industrial Court, not the co-operative tribunal. The focus of the appeal was directed primarily on this issue.

The Respondents' Reply

[22] The respondents opposed KOSMA's submission that they were estopped from saying that the Industrial Court had no jurisdiction to hear their complaint. They contended that they commenced their action before the Industrial Court because they had not been advised of the provisions of the Act, and that they had the right to elect the correct forum to channel their grievances. They further argued that the decision to refer the dispute to the co-operative tribunal was final and could not be questioned before the courts pursuant to s. 82(5) of the Act.

[23] In opposition to KOSMA's contention that the withdrawal of their claim in the middle of the Industrial Court proceedings was prejudicial to KOSMA and amounted to an abuse of process, the respondents submitted that the matter had not been fully ventilated as the case was withdrawn before they had called any witnesses and before the Industrial Court adjudicated on the claim.

The Third Respondent's Contentions

[24] The third respondent claimed that it was within its jurisdiction to refer the matter to the co-operative tribunal because the dispute between KOSMA and the respondents involved the internal affairs and management of a co-operative society. KOSMA as a co-operative society is governed and bound by the provisions of the Act. Therefore, all disputes between it had to be brought before the third respondent to determine.

[25] Further, the third respondent contended that it was empowered by the Act to give the respondents the reliefs they sought for wrongful dismissal, such as compensation or reinstatement. On the issue of the failure to obtain the consent of the Minister of Human Resources to refer the dispute to the co-operative tribunal, the third respondent submitted that it had the power to make a recommendation to the Minister that a tribunal be formed to hear a particular dispute.

Our Decision

[26] Although several issues were raised in relation to this appeal, as outlined above, the primary matter that fell for consideration centred on whether the third respondent was conferred with the requisite jurisdiction under the statutory provisions of the Co-operative Societies Act 1993 to deal with disputes relating to wrongful termination of employment or unfair dismissal.

[27] Our determination of that single issue would effectively resolve the entire dispute. If the third respondent did not have the jurisdiction or power to do so under the Act, then such referral as it had made would be *ultra vires*, in excess of its jurisdiction and therefore null and void. If, on the other hand, the third respondent was so conferred with jurisdiction, then and only then

would the other ancillary issues, such as the need for consent from the Minister of Human Resources on the part of the third respondent, and contentions of estoppel and abuse of the process of court on the part of the respondents, fall for determination.

[28] We therefore proceeded on that basis in the adjudication of this appeal. As we finally concluded that the third respondent had not been conferred with the jurisdiction or the power to determine or to refer to a tribunal to determine a 'dispute' relating to wrongful termination of the employees of a co-operative society, the ancillary issues above did not require adjudication.

Issue: Does S. 82(1) Of The Act Confer Upon The Suruhanjaya Koperasi Malaysia ('The Commission') The Jurisdiction Or Power To Determine And Adjudicate Upon A 'Dispute' 'Touching The Management Or Business Of A Co-operative Society' That Arises Between "The Co-operative Society And Any Officer Of The Co-operative Society"?

[29] For ease of reference, s. 82 of the Act provides as follows:

> Settlement of disputes
>
> 82.(1) **If a dispute touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a co-operative society arises**:
>
> (a) among members, past members and persons claiming through members, past members and deceased members;
>
> (b) between a member, past member or person claiming through a member, past member or deceased member, and the co-operative society, its Board, or any officer of the co-operative society;
>
> (c) **between the co-operative society or its Board and any officer of the co-operative society**; or
>
> (d) between the co-operative society and any other co-operative society, **such dispute shall be referred to the Commission for decision**.
>
> (2) ...
>
> (3) **The Commission may, on receipt of a reference under subsection (1)**:
>
> (a) decide the dispute by itself;
>
> (b) refer the dispute to an arbitrator or arbitrators for disposal;
>
> (ba) **refer the dispute to the tribunal established under section 83; or**
>
> (c) require the parties concerned to refer the dispute to a court.
>
> (4) ...
>
> (5) The decision of the Commission shall be final and shall not be called in question in any civil court.

(6) ...

(7) ...

(8) ... (emphasis added).

Interpretation Of S. 82(1)(c)

[30] It is clear from a reading of s. 82 that its purpose is the resolution of disputes. The type of dispute that the Commission may resolve is described in s. 82(1). It serves to define the limits of a dispute falling within the purview of the powers of the Commission. The specific words of both definition and limitation are:

(1) "touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a co-operative society";

(2) "arises - (a) among members, past members, ... (b) between a member, past member ... (c) between the co-operative society or ... and any officer of the co-operative society"

[31] Therefore, the section envisages that firstly, the dispute must "touch" on or relate to the constitution or by-laws of the society, the election of officers, conduct of general meetings by the society, management of the society, or the business of the co-operative society.

[32] If it falls within those specific areas, then it is further honed down to encompass only disputes touching on the above matters between several categories of persons. On the facts of our case, it relates to a dispute between ex-employees or ex-officers of the co-operative society and the co-operative society. The question that falls for consideration is whether this dispute falls within the categories of disputes envisaged to be resolved by the Commission.

[33] Construed as a whole, the Act relates to disputes concerning the internal or domestic affairs of the society and persons who are connected to the co-operative society. This is clear from a plain reading of the section. It does not purport to cover disputes which are outside of the scope of the workings and business of the society or persons who not members, past members or heirs or legal representatives of deceased members. In other words disputes which relate to members or officers/employees of the co-operative society only, fall within the purview of this section relating to the resolution of disputes.

[34] This is a plausible and tenable construction because the entire Act is centred on co-operative societies. Therefore, disputes too must relate to, or be connected in some manner with the workings of a co-operative society.

[35] It is arguable even from this plain reading that the dispute in the instant case, of unjust or wrongful termination of the officers of the co-operative society do not fall within the purview of s. 82(1)(c) because:

(i) Although the two respondents remain members of the co-operative society, their dispute is not in relation to their membership. In other words, their grievance is not in their capacity as members. Their grievance relates to their past employment as officers;

(ii) They are no longer officers of the co-operative society. The section makes no provision, on the face of it, for an ex-officer to have a dispute relating to unfair or wrongful dismissal adjudicated upon by a tribunal established at the behest of the Commission under s. 83;

(iii) Their complaint relates to a cessation of their relationship/employment as officers with the co-operative society as their employer. This does not appear to fall within the section as there is no reference to past officers or ex-officers;

(iv) The instant case is distinguishable from *Arulandan's* case where Arulandan continued to remain in the employment of the co-operative society. The dispute could therefore be properly categorised as falling within the two defining limbs. This is because it related to the management of the co-operative society, as the discipline of officers falls within 'management'. Secondly as a subsisting officer who had a grievance, Arulandan could properly bring such a grievance under s. 82.

[36] To that extent, in holding that a wider construction ought to be accorded to the words "touching the … management or business of a co-operative society" the decision of the Supreme Court does not in any manner alter the express definition and limitations imposed by the section.

[37] Even according the word "management" a wide construction, it does not follow that an ex-officer can refer a dispute to the Commission for resolution because an ex-officer does not fall within the categories specified in s. 82. Section 82(1)(c) does not make reference to an ex-officer of the co-operative society.

[38] Secondly, the issue of the termination of employment does not amount to a "management" issue within a co-operative society, again because the cessation of service of an officer means that he is no longer employed by the society. Such an officer's grievance does not then touch on any management issue within the purview of the co-operative society. Rather it relates to the grievance of an employee who contends that his contract of employment has been unlawfully or wrongfully terminated. That is a matter that falls outside the ambit of the "management" of a co-operative society, because it is no longer a domestic or internal matter. It is a matter which gives rise to a cause of action in the law of dismissal, the remedy for which is provided by statute,

namely the Industrial Relations Act 1967. (Alternatively, an action may be brought in court, although the remedies under contract and/or the common law are relatively limited).

[39] In summary, whether a plain or purposive approach is utilised to construe s. 82(1)(c), it is apparent that a dispute such as the present does not fall within the section. It is not only a matter of construction of the words "touching the ... management ... of a co-operative society" but equally a question of falling within the specific categories set out in the section.

[40] The section has to be read as a whole. When this is done, it is evident that the purpose of this section is to resolve disputes relating to the affairs of a co-operative society within a limited category of persons. These categories do not include ex-officers of the society. It only covers subsisting officers. The fact that the respondents here remain members of the co-operative society does not resolve the issue because their dispute is not as members or *qua* members. Their dispute relates solely to their employment.

[41] It would follow from such an interpretation that the Commission acted outside the scope of its powers as prescribed by the Act. In other words, it acted in excess of its jurisdiction in referring the matter to the co-operative tribunal.

The Relevant Case-law On S. 82(1)(c)

[42] The thrust of the case as argued before us by both parties was that in view of the Federal Court decision in *Arulandan*'s case, this court was bound to conclude that the dispute in the instant case fell within the boundaries of s. 82(1)(c).

[43] We have set out above the arguments that dispel this proposition. However, much reliance was placed on *Arulandan*'s case particularly that portion of the case that relied on *Madhava Rao*.

[44] *Madhava Rao* is a case from the Madras High Court (India) and dates back to 1954. *Arulandan* was heard and disposed of by the Supreme Court in 1987, some 30 years later. However, in the course of adjudication of *Arulandan*, the cases of *Co-operative Central Bank* and *Deccan Merchant* were not made available to the Supreme Court. The effect of *Deccan Merchant* and *Co-operative Central Bank* was to effectively overrule *Madhava Rao*.

[45] This issue is of relevance because of the respondents' reliance on the construction adopted in *Madhava Rao* to substantiate their stance that the Commission is indeed empowered to refer the instant dispute for resolution to a tribunal under the Act. This was also a pillar of their argument to support the proposition that the tribunal had the jurisdiction to determine matters relating to unfair dismissal, including the remedies of reinstatement and the award of backwages. The net result would be that a body set up by the

Commission with the consent of the Minister would be accorded powers equivalent to that of the Industrial Relations Court. The latter is a creature of statute, namely the Industrial Relations Act 1967, and exercises its powers strictly within the ambit of the statute. It is misconceived to contend that the Commission, under s. 82 of the Act, which deals primarily with the resolution of disputes of co-operative society only, can arrogate to itself such extensive powers without express provision by way of legislation.

[46] Put another way, the tribunal lacks the jurisdiction to resolve disputes of this nature, namely the adjudication of an unfair or wrongful dismissal claim relating to the termination of employment of an employee. Neither does it possess the jurisdiction to award reliefs such as reinstatement and arrears of wages.

[47] What then do the cases of *Arulandan* and the three Indian cases of *Madhava Rao*, *Co-operative Central Bank* and *Deccan Merchant* state?

[48] As summarised briefly earlier, *M Arulandan* relates to a case, where an officer of the co-operative society sought a declaration that the disciplinary action taken against him was null and void and further sought that his increment that had been barred for a period of one year be restored. The Supreme Court held that the words "touching ... on the business of a registered society" must be given its full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word "touching", it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society.

[49] Again, as we have pointed out above, the facts of the present appeal are distinguishable from *Arulandan*, as in that case, Arulandan remained an officer of the society and only sought relief against disciplinary action. It was not a claim for wrongful dismissal or termination, as is the case with the respondents here.

[50] The case of *Co-Operative Central Bank Ltd & Ors v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad* [1970] AIR 245 overruled *Madhava Rao*. In doing so, reliance was placed on another Indian Supreme Court decision, namely *Deccan Merchants Co-Operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors* AIR [1969] Supreme Court 1320. In the latter case, the Supreme Court narrowed the definition to be accorded to the phrase "touching on the business". It was pointed out that there was a limitation to the word "dispute" in that it only covers disputes which are capable of being resolved by the Registrar or his nominee.

[51] *Deccan Merchant* dealt with a dispute between a landlord society and tenant. The Indian Supreme Court held that it was doubtful that the word "dispute" in the relevant legislation would include such a dispute. There was

specific legislation dealing with the dispute and the court therefore felt that it was not within the contemplation of the Bombay Co-operative Societies Act 1925 that such a dispute be referred to the Registrar.

[52] In like manner in the present case, as we have pointed out earlier, we have specific legislation dealing with unfair dismissal, namely the Industrial Relations Act 1967. The operation of the Industrial Relations Act 1967 has not been expressly excluded by the Co-Operative Societies Act 1993.

[53] Following *Deccan Co-Operative*, we are of the view that the claims and grievances of the respondents as set out in their statement of case do not fall within the scope of the phrase "touching ... on the management or business' or the word "dispute" in s. 82(1)(c) of our Co-Operative Societies Act 1993. This is because "touching ... on the management or business" does not cover a dispute relating to an officer of a co-operative society who has been dismissed from service with the society for misconduct. In *Arulandan* there was no question of dismissal. It was not, to our minds, within the contemplation of the Legislature to confer such jurisdiction on the Co-operative Societies Commission. The jurisdiction to resolve disputes such as the present case which deals with a claim of unfair or wrongful dismissal from a co-operative society falls within the regime of the Industrial Relations Act 1967.

[54] Finally, with respect to the respondents' ancillary claim for defamation, this court held in *On Long & Ors v. Romeli Dollah* [2014] 7 CLJ 371 that defamation did not fall within the ambit of s. 82(1) of the Co-operative Society Act 1993, and we adhere to that decision, with respect.

[55] For the foregoing reasons, we were unable to conclude as the learned High Court Judge did, that the decision of the Commission fell within the scope of its jurisdiction under the Act. On the contrary, we concluded that it was made in excess of jurisdiction and to that extent was tainted by illegality and/or irrationality.

[56] As such, curial intervention was merited and the appeal allowed with costs. The decision of the High Court was set aside and we allowed the application for judicial review.

[57] We further ordered that the costs of RM33,000 paid to the respondents in the High Court be paid to the appellant within 14 days of service of this order, subject to allocatur. The deposit was refunded to the appellant.